IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

RECEIVED

JUN 28 1983

H. Stuart Cunningham, Clerk
United States District Court

ATARI, INC., a Delaware corporation, and MIDWAY MFG. CO., an Illinois corporation, Plaintiffs,	)	
vs.	)	No. 81 C 6434
NORTH AMERICAN PHILIPS CONSUMER ELECTRONICS CORP., a Tennessee corporation, PARK TELEVISION, d/b/a PARK MAGNAVOX ENTERTAINMENT CENTER, an Illinois partnership, and ED AVERETT, an individual, Defendants.	)	Judge Leighton

DEFENDANTS' PROPOSED FINDINGS OF
FACT AND CONCLUSIONS OF LAW RE
MOTION TO DISQUALIFY REUBEN & PROCTOR

Plaintiff, Midway Manufacturing Company ("Midway"), has filed a motion to disqualify the law firm of Reuben & Proctor from representing the defendants in this action. The claimed basis of the motion is that during the pendency of this action, David W. Maher, Esq., a member of Reuben & Proctor, represented the Amusement Game Manufacturers' Association ("Association"), a trade association, of which Midway's parent became a member on May 20, 1982. Midway claims that its "confidences, secrets, legal positions, evidence, manner and strategy of litigation, and documentation" relating to the present action were communicated in confidence to Mr. Maher and

that "[it] was Midway's belief that Mr. Maher was acting as counsel for both the Association and Midway with respect to these matters." (Motion to Disqualify, ¶¶4-5) These confidences were allegedly reposed in the course of an Association program to exchange information about pending legal proceedings, judicial decisions, and legislative developments, and most specifically, at Association meetings held on October 14-15, 1982.

The motion was opposed by the Reuben & Proctor firm and the Court has heard evidence consisting of the testimony of Mr. A. Sidney Katz, who is Midway's counsel, Mr. Glen E. Braswell, the Association's Executive Director, Dr. Martin Keane, and Mr. Maher. */ A number of exhibits have also been admitted in evidence. **/ From the evidence, the Court concludes that no confidential information was transmitted to or from Reuben & Proctor and that Reuben & Proctor does not owe Midway any fiduciary obligation that would preclude its participation in this case as counsel for the defendants. Accordingly, the motion to disqualify is denied.

---

*/ A copy of the Transcript of Proceedings of the hearing on the disqualification motion on June 18, 1983 is attached hereto for the court's convenience as attachment A.

**/ Plaintiff Midway's Exhibits A through K consist of exchanges of court documents, briefs, drafts of legislation, press releases, agency orders, and minutes of Association meetings. Defendant's Exhibits consist of letter from Mr. Katz to Mr. Maher (D.Ex.A) and the affidavit of Mr. Maher (D.Ex.B).

FINDINGS OF FACT

The parties agree that Reuben & Proctor had no direct professional relationship or engagement by Midway or its parent corporation. (Tr. 3) The parties also are in agreement that a lawyer's representation of a trade association does not ipso facto disqualify the lawyer from representing interests adverse to those of the association's members after the termination of his relationship with the association. Rather, it is necessary for a member seeking disqualification of association counsel to establish that its representatives reasonably believed that they were consulting and dealing with the association lawyer as part of a professional relationship, and that they were entrusting confidences to the attorney under such circumstances as to be entitled to confidentiality. (Tr. 5-6, 100 [statements of Midway's counsel]) In addition, just as in any other case where a lawyer is sought to be disqualified on the basis of a prior professional relationship, the movant must establish that the matters involved in the prior representation are substantially related to those at issue in the present case. It was in fact Midway's position that this is a Canon 4 case. (Tr. 5, 99-100 [statements of Midway's counsel])

With these concessions of fact and principles in mind, the Court turns to whether Midway representatives perceived or could have perceived that, on the occasions relied upon as a basis for disqualification, they were consulting and dealing with Mr. Maher as part of a professional relationship.

I. BACKGROUND

This copyright infringement action was filed by Midway in November, 1981 against North American Philips Consumer Electronics Corporation and Park Magnavox Home Entertainment Center. Plaintiff charges defendants with infringing its copyright in the audiovisual work of the Pac-Man video game. (Amended Complaint, filed February 24, 1982) Defendants have not raised any issue as to the copyrightability of videogames generally -- their own products, placed in evidence at the preliminary injunction hearing, bear copyright notices. (Defendants' Preliminary Injunction Exhibits 3 and 17) Quite the contrary, defendants simply contest the validity of the particular copyrights issued to the plaintiffs. Reuben & Proctor appeared as additional counsel for the defendants on May 5, 1983, some 18 months after the case began and after a ruling on a preliminary injunction had been made by the Seventh Circuit, Atari, Inc. v. North American Philips Consumer Electronics Corp., 672 F.2d 607 (7th Cir. 1982), which held that plaintiffs' Pac-Man game contained protectible forms of expression. (672 F.2d at 615-17)

Bally Midway Manufacturing Company, formerly known as Midway Manufacturing Company, is one of a number of subsidiaries of the Bally Manufacturing Company ("Bally"). (Tr. 52-53 [Katz]) On May 20, 1982, the parent, Bally, was admitted to membership in the Association. (Tr. 7, 51 [Katz]; Tr. 92 [Maher]) Sidney Katz, Esq., is patent, trademark, and copy-

right counsel for Bally and some, but not all, of its subsidiaries. (Tr. 55 [Katz]) The subsidiaries he represents are those designated to him by Bally, and include Midway, the plaintiff in this case. (Id.)

Reuben & Proctor was general counsel to the Association from May 1, 1981 until December 31, 1982. (Tr. 77-78 [Maher]) The Association is composed of corporations and individuals that manufacture video games, as well as suppliers of components for such games. David Maher was the Reuben & Proctor partner responsible for the client. (Tr. 81-82 [Maher]) The firm's principal concern was to avoid exchanges of information that might raise antitrust problems. (Tr. 78 [Maher]) It also attended to corporate law matters for the Association, and coordinated the information exchange program and meetings described below. (Id.)

II. INFORMATION EXCHANGE PROGRAM

In February or March, 1982, Mr. Katz was invited to attend a meeting sponsored by the Association. (Tr. 7-8 [Katz]) This was several months before Bally joined the Association. (Tr. 84 [Maher]) The stated purpose of the meeting "was going to be to discuss the copyright protection for video games" (Tr. 8 [Katz]). At the meeting, there was a general discussion of the status of video games under the trademark and copyright laws. (Tr. 9 [Katz]) Mr. Katz did not claim that any confidential information was furnished during this meeting and he was then an outsider being a non-member.

The participants did agree to forward to Mr. Maher copies of judicial decisions, briefs, proposed legislation, and similar materials that might be of interest to the members, so that Mr. Maher could distribute them to all Association members. (Id.) This was in fact done. (Tr. 9-10 [Katz])

The nature of the material that was seen and disseminated by Mr. Maher is exemplified by Plaintiff's Exhibits D, G, H, and J. Plaintiff's Exhibit D is an amicus curiae brief filed in the United States Supreme Court in a case involving municipal regulation of video games. Plaintiff's Exhibit G is a letter from Mr. Katz to Mr. Maher enclosing the "WIPO/UNESCO report on Recommendations For Settlement Of Copyright Problems Arising From The Use Of Computer Systems For Access To Or The Creation of Works," dated August 13, 1982 and obtained from the United States Copyright Office. Plaintiff's Exhibit H is a letter from Mr. Maher to plaintiffs' counsel enclosing a copy of H.R. 6983, a bill then pending in the Congress. Plaintiff's Exhibit J is a letter from Mr. Maher enclosing some CompuServe computer printouts relating to arcade games which were available to anyone who subscribes to CompuServe.

Midway's counsel stamped these documents "Confidential" before placing them in the record here relating to the disqualification motion. (Tr. 30-31 [Katz]) The Court finds that they are not privileged or confidential documents. The Court further finds that parties who describe such material as

confidential either do not understand the meaning of the word or are attempting to create an illusion for the purpose of this motion. It is very clear that what was done was simply the exchanging of public information regarding subjects of mutual interest. Nor was there any sort of professional or fiduciary relationship between Mr. Maher and Midway involved. Indeed, as noted above, at the time Bally's representative Mr. Katz began participating in the program, Bally was not even a member of the Association.

III. OCTOBER 14-15, 1982 MEETINGS

The crux of this controversy, as tendered by Midway, centers on two meetings held at the offices of Reuben & Proctor on October 14 and 15, 1982. (Tr. 10-27) Mr. Maher called Mr. Katz and invited him to the meetings. (Tr. 11) Mr. Katz went there, and Mr. Katz says that he disclosed or talked about some of the details of the prosecution theory of the Midway Manufacturing Company in this lawsuit. (Tr. 21)

The purpose of these meetings was to have Amedee Turner, Esq., an English barrister who specializes in patent, trademark and copyright matters, inform Association members and their counsel about the status of video games under European patent, trademark and copyright law. (Tr. 11-12 [Katz]) In addition, Mr. Turner would have an opportunity to educate himself regarding the status of video games under American intellectual property law. (Tr. 12 [Katz]) Mr. Turner is a Queen's Counsel, a Member of the European Parliament, Vice

Chairman of its Legal Affairs Committee, a Member of its Economic and Monetary Committee, and Rapporteur of the European Trademark Act. (Plaintiff's Exhibit F, p. 1; Tr. 78-79 [Maher]) He is not a member of the Association. (Tr. 35 [Katz]) Mr. Turner was particularly interested in the American law on this subject because he was in charge of writing the intellectual property legislation for the European Common Market. (Tr. 12, 35-36 [Katz])

The meeting of October 14, 1982 lasted the entire business day. (Tr. 16 [Katz]) Besides Messrs. Turner and Maher, the persons present were Dr. Martin A. Keane, the Vice President and Director of Technology of Bally (Tr. 69 [Keane]), Christopher Otis and Thomas Taxon of Destron/G.D.I., and Robert D. Crane, legal representative of Gremlin Sega. (Tr. 15-16 [Katz]; Plaintiff's Exhibit F, p. 1) Other technical representatives had been invited, but did not show up. (Tr. 85-86 [Maher])

All of the companies named have interests which are adverse to those of Bally and Midway to some degree. Gremlin Sega is a member of the Association that competed with Midway in the manufacture of video games. (Tr. 35 [Katz]) Destron/G.D.I. was attempting to bring out a video game, but apparently had not succeeded at the time of the meeting. (Tr. 35 [Katz]; Tr. 73-74 [Keane])

In addition, these companies or their affiliates were then engaged in litigation with Midway. Midway and the parent

of Sega were involved in litigation over whether a book on how to play Pac-Man infringed Midway's copyrights. (Tr. 38-39 [Katz]) */ Williams and Midway were involved in a patent infringement suit. (Tr. 40 [Katz]) **/ Midway was also engaged in disputes with Atari, its co-plaintiff in this action, over the Atari Pac-Man cassette (Tr. 40-41 [Katz]), and over whether Midway could settle this litigation without Atari's consent. (Tr. 42-44 [Katz]; Defendants' Exhibit 2) Finally, the nature of the video game business is such that there is always potential litigation among the members of the Association, including copyright litigation. (Tr. 47 [Katz].)

The matters discussed on October 14, 1982 consisted of what video games are and how the copyright, trademark and patent laws apply to them. (Tr. 18-22 [Katz]) Various cases that the members of the Association had been involved in were also discussed. An electronic circuit board, which Mr. Katz' firm had used as an exhibit in a lawsuit involving the Pac-Man game, was used to illustrate some of the discussion. (Tr. 24-25 [Katz]), Tr. 88-89 [Maher])

The Court, after hearing the testimony, finds that the meeting was comparable to that of a bar association com-

---

*/ Publications International Ltd. v. Bally Mfg. Corp., No. 82 C 2183 (N.D. Ill.) (Bally Midway Mfg. Co.'s counterclaim against Gulf & Western Corp, the parent of Gremlin/ Sega.)

**/ Williams Electronics, Inc. v. Bally Mfg. Corp., No. 82 C 2167 (N.D. Ill.)

mittee dealing with a specialized area of the law. Attorneys often participate in discussions of what might be termed "litigation strategy" at such meetings, even when they are appearing on opposite sides of a case at the time. However, the information imparted is not confidential and does not create a professional or fiduciary relationship. Indeed, Mr. Katz and another attorney at his firm, Eric C. Cohen, have published a paper, "Protection of Products From Counterfeiting & Simulation" (Defendants' Exhibit 3), which contains such discussions, including discussion of Pac-Man litigation. (Tr. 44-45 [Katz]) */

The October 15 meeting lasted from about 9 a.m. to about 3 p.m. (Tr. 17 [Katz]) Twelve people attended. In addition to Messrs. Katz, Turner, Crane and Maher, the participants were Melvin M. Goldenberg, who is an attorney for Williams Electronics, Bennett M. Shulman, who is counsel for Destron/ G.D.I., Karen Witte, who is counsel for Atari, David Schoenberg, who was an attorney for Stern Electronics, and J. Vernon Lloyd, Marshall Burmeister, and R. Murray Burton, all of whom were counsel for Taito America Corporation. (Tr. 16-17 [Katz]; Plaintiff's Exhibit F, p. 3) The companies referred to are all members of the Association and competitors in the manufacture of video games. (Tr. 17, 39-40, 46-47 [Katz])

---

*/ Mr. Katz testified that he disclosed more at the meeting than in this paper. (Tr. 45) Even so, the matters discussed at the meeting were no different in kind. The description in Mr. Katz' affidavits and testimony of what was said at the meeting could be applied with equal facility to the contents of the paper.

The format of this meeting was essentially a lecture by Mr. Turner on European patent, trademark, and copyright law. (Tr. 87 [Maher]; Plaintiff's Exhibit F) The testimony satisfied the Court that this meeting was an informal exchange with a prominent foreign official of a sort that commonly occurs before trade association and bar association groups.

The precise capacity in which Mr. Katz attended these meetings is not entirely clear. Only Bally, the parent, and not Midway, the subsidiary, is a member of the Association (Tr. 93 [Maher]), Midway was not identified on Bally's membership application (Id.), and Mr. Katz in his testimony himself distinguished between Association members and their subsidiaries in his mind (Tr. 35, 38); he does not represent all of Bally's subsidiaries (Tr. 55). On the other hand, the fact that Bally was in the video game manufacturing business was known to all concerned (Tr. 93-94 [Maher]), Midway's revenues were included in the figure Bally submitted to the Association for purposes of determining its dues (Tr. 94 [Maher]), and Mr. Braswell testified that the Association acted on behalf of the parent and such of its subsidiaries as were in the amusement device business (Tr. 67-68). The question of whether Westinghouse Electric Corp. v. Kerr-McGee Corp., 580 F.2d 1311 (7th Cir.), cert. denied, 439 U.S. 955 (1978), authorizes the implication of a fiduciary obligation between counsel for a trade association and a member's subsidiary (rather than the member) is an interesting one, but need not be resolved here. The Court will, however, consider this ambiguity as to who was

actually participating in the meetings, i.e., the member or the subsidiary of the member, in determining whether there was a reasonable expectation of confidentiality and a reasonable belief that Mr. Maher was acting as the subsidiary's lawyer.

Also relevant to the question of reasonable expectation is the status of Mr. Amedee Turner. Mr. Katz testified that Mr. Turner was acting as counsel for the Association at the meetings. (Tr. 36-37 [Katz]) However, Mr. Katz' testimony was contradicted by that of Midway's witness, Glenn E. Braswell, Executive Director of the Association and a lawyer with experience in trade association matters (Tr. 57-58), who testified that Mr. Turner has never been retained by the Association. (Tr. 62-63) It was also contradicted by Mr. Maher, who testified that he had previously considered whether Mr. Turner could be retained by the Association, harbored serious doubts about whether payments to Mr. Turner would be consistent with the Foreign Corrupt Practices Act, and advised the Association not to retain him. (Tr. 80-81 [Maher]) Midway could not identify any resolution, minutes, or other Association documents evidencing Mr. Turner's retention as counsel, although it had access to the Association's files and such documentation would have existed had Mr. Turner been retained. Finally, the minutes of the association meeting (Plaintiff's Exhibit F) reflect an informal discussion of the state of the law, not communications made for the purpose of securing legal advice or the performance of legal services, and do not in any way indicate that Mr. Turner was acting as counsel to anyone. (Tr. 37-38 [Katz])

Turner was clearly and simply a well-known, distinguished and knowledgeable person in the field of law with an official position abroad who was brought here by the Association, at the Association's expense, to speak to the members.

The only basis Mr. Katz could articulate for his belief was that Mr. Turner "was going to be compensated by the Association, for coming; at least for his time and expenses." (Tr. 50 [Katz]) This is common practice with lecturers, and given the format of the meeting, does not furnish a reasonable basis for any belief that Mr. Turner was there as counsel rather than a lecturer. Also, Mr. Braswell testified that all the Association ever paid was Turner's expenses. (Tr. 62)

Mr. Katz testified that at these meetings he "perceived [Mr. Maher's] role as also being representing Midway's interests". (Tr. 15) He also reaffirmed his affidavits, in which he asserted that "[i]t was my understanding and belief that some of the information relating to copyright protection of audiovisual works of video games including Pac-Man, the issues involved in this very action, communicated to Mr. Maher during my meetings with him on behalf of Midway was sensitive and confidential" (Plaintiff's Exhibit M, ¶2), that "I would never have made such statements and disclosures if I had any inclination that any person present was or would become an adverse party or act as legal counsel for an adverse party on these issues," that "[i]t would have been unthinkable to me at that time to relate such information to a defendant, or defendant's counsel, in this case," and that he acted "under the

belief that there was a relationship of trust and confidence between Mr. Maher and Midway." (Plaintiff's Exhibit L, ¶¶12, 14; Tr. 27 [Katz])

The Court carefully observed Mr. Katz as he testified and it is the Court's view that Mr. Katz was trying very hard to make it appear from his testimony and his description of what went on in those two meetings that he was disclosing in the presence of Mr. Maher confidential information. The Court has listened very carefully to what it was that Mr. Katz revealed. The Court finds that none of it was confidential. It was ordinary matter about a lawsuit that any lawyer would talk about in the presence of other individuals, including lawyers -- even opposing lawyers. None of it was confidential. None of it was information that could not be obtained elsewhere, and Mr. Maher has denied under oath that he received any confidential information from Mr. Katz as general counsel of the Association. (Tr. 118)

The Court has also considered the circumstances of the meetings, particularly the format of the meetings, the presence of competitors and adverse parties to litigation, the ambiguous capacities in which Mr. Katz and others attended, the presence of Mr. Turner, and the lack of evidence which even suggests Turner was then acting or being considered as counsel for the Association. Mr. Katz, an attorney of 17 years' experience (Tr. 6 [Katz]), is charged with the knowledge that communications cannot be privileged if they are made in the presence of a stranger. Moreover, and of greater importance,

Dr. Keane, a senior executive of Mr. Katz' client, emphatically testified that he would never have provided any technical information to his competitors that was not readily available to them. (Tr. 74 [Keane]) It is incredulous to believe that Mr. Katz was no less circumspect. */

In sum, the Court cannot credit Midway's assertion that these meetings involved a professional relationship or were entitled to confidentiality. The Court finds from the evidence that the matters discussed on October 14-15, 1982 were not confidential, and that the Bally representatives did not entertain any belief that Mr. Maher was being entrusted with confidential information. **/

CONCLUSIONS OF LAW

The Court has already noted that the parties agree that the threshold question is whether Bally's representatives reasonably believed they were consulting and dealing with the

---

*/ Midway makes much of the fact that Mr. Maher said he would not have expected Mr. Turner to disclose what transpired at the meetings. (Tr. 82 [Maher]) That does not change Mr. Turner's status here. Thus, a domestic legislator who meets with a group interested in pending legislation for a frank exchange of views would not be expected to publicize what was said. But no one would believe that the legislator was acting as an attorney.

**/ Mr. Katz' affidavit (Plaintiff's Exhibit L) also referred (¶13) to a July, 1982 meeting at which Association members and their counsel discussed remedies available before the United States International Trade Commission. There clearly could have been no expectation of confidentiality with respect to that meeting because one of the participants was a Commission representative. (Tr. 28-29 [Katz); Tr. 81 [Maher]) Citing this meeting is another example of the extent to which Midway would go to create a confidence where there was none.

Association lawyer in the course of a professional relationship, and that they were entrusting confidential information to the lawyer under circumstances entitling them to confidentiality. This requirement is indeed found in the applicable authorities, particularly Westinghouse Electric Corp. v. Kerr-McGee Corp., 580 F.2d 1311 (7th Cir.), cert. denied, 439 U.S. 955 (1978), where the Court of Appeals recognized that even though a formal attorney-client relationship did not exist between counsel for a trade association and three of its members, an implicit professional or fiduciary relationship may exist "because of the nature of the work performed and the circumstances under which confidential information is divulged" (580 F.2d at 1320). Accord, LaSalle National Bank v. Pioneer National Title Insurance Co., 79 C 2837 (N.D.Ill. 1980); In re Allied Artists Pictures Corp., 5 B.C.D 636, 639-40 (Bkcy., S.D.N.Y. 1979). The case of Glueck v. Jonathan Logan, Inc., 653 F.2d 746 (2d Cir. 1981), cited by plaintiff, is consistent with this standard in that the court refused to treat representation of the association as equivalent to representation of the member; insofar as Glueck involved an ongoing relationship between counsel and the association and the added consideration of chilling or disclosing future communications, it is not in point here. */

---

*/ The privilege cases relied upon by plaintiff, Philadelphia Housing Authority v. American Radiator & Standard San. Corp., 294 F.Supp. 1148 (E.D.Pa. 1969); United States v. American Radiator & Standard San. Corp., 278 F.Supp. 608

(Footnote Continued on Following Page)

In the present case, the facts simply do not show confidential information or a professional relationship with the member. The facts of the present case stand in contrast to those of Westinghouse, where each member making a disclosure to association counsel did so in the presence of only persons who owed an obligation of confidentiality to that member. Indeed, each member had previously been advised that counsel for the association would "hold any company information learned through these interviews in strict confidence, not to be disclosed to any other company, or even to [the association], except in aggregated or such other form as will preclude identifying the source company with its data" (580 F.2d at 1313). Moreover, the information provided -- such matters as past and future research and development expenditures and the value of assets employed in narrow lines of business, see 580 F.2d at 1314-16, nn. 2-3 -- was admittedly "not then available from publicly available sources" (580 F.2d at 1316, n. 3). On the basis of those facts, the Court of Appeals concluded that "Gulf, Kerr-McGee and Getty each entertained a reasonable belief that it was submitting confidential information . . . to a law firm which had solicited the information upon a representation that

---

(Footnote Continued From Previous Page)

(W.D.Pa. 1967); and Schwartz v. Broadcast Music, Inc., 16 F.R.D. 31 (S.D.N.Y. 1954), are likewise not to the contrary. By definition, the attorney-client privilege applies only "(1) where legal advice of any kind is sought, (2) from a professional legal advisor in his capacity as such, [and] (3) the communications relating to that purpose, [are] (4) made in confidence . . . ." Sneider v. Kimberly-Clark, 91 F.R.D. 1, 3 (N.D.Ill. 1980).

the firm was acting in the undivided interest of each company" (580 F.2d at 1321, emphasis added). The facts here are quite different, and this Court cannot find from listening to the evidence a reasonable belief that Reuben & Proctor was acting in the undivided interest of Bally or that any confidential information was transmitted.

Midway also contends, citing General Electric Co. v. Valeron Corp., 428 F.Supp. 68 (E.D.Mich. 1977), aff'd, 608 F.2d 265 (2d Cir. 1979), cert. denied, 445 U.S. 930 (1980), that the Court cannot require Midway to specify what confidential information it transmitted to Mr. Maher. This argument, however, assumes as its premise the very issue before the Court -- namely, that the communications to the attorney were made in the course of a privileged relationship. Where a "traditional" attorney-client relationship (such as that between Mr. Katz and Midway) admittedly existed, many courts have declined to permit the attorney to argue that the information transmitted to him was not confidential, no doubt because the probability that confidential information was transmitted is high and the only way to rebut such a claim would be to reveal the information, at least to the Court. */

---

*/ Some courts, however, "consider the better view to be that the court has latitude to permit the attorney to rebut even this presumption." Lemelson v. Synergistics Research Corp., 504 F.Supp. 1164, 1167 (S.D.N.Y. 1981); accord, Government of India v. Cook Industries, Inc., 569 F.2d 737, 741 (2d Cir. 1978) (Mansfield, J., concurring); Simmons, Inc. v. Pinkerton's Inc., 555 F.Supp. 300, 304 (N.D.Ind. 1983); Lemaire v. Texaco, Inc., 496 F.Supp. 1308, 1310 (E.D.Tex. 1980).

However, "[a]bsent an attorney-client relationship no court has applied the presumption inherent in Canon 4." Fred Weber, Inc. v. Shell Oil Co., 566 F.2d 602, 608 (8th Cir. 1977), cert. denied, 436 U.S. 905 (1978). The distinction is clearly recognized in this Circuit, since our Court of Appeals did not hesitate to inquire what information was imparted and whether it was confidential in the seminal Westinghouse case. Another judge of this Court recently did likewise in International Paper Corp. v. Lloyd Mfg. Co., 555 F.Supp. 125, 134-35 (N.D.Ill. 1982), a case in which a co-party of counsel's former client sought to disqualify him on the ground that he had access to the co-party's confidences as a result of a joint defense. See also, Wilson P. Abraham Construction Corp. v. Armco Steel Corp., 559 F.2d 250 (5th Cir. 1977); Fred Weber, Inc. v. Shell Oil Co., supra.

Here too the Court considered it appropriate to make the inquiry. Having found from the testimony and an observation of the witnesses' demeanor on the stand that no confidential information was transmitted to Mr. Maher, deliberately or

inadvertently, and that there was no reasonable perception of any privileged relationship, the motion to disqualify is denied.

Respectfully submitted,

One of the attorneys for defendants

Don H. Reuben
James H. Alesia
Jaroslawa Zelinsky Johnson
REUBEN & PROCTOR
19 South LaSalle Street
Chicago, Illinois 60603
(312) 558-5500

CERTIFICATE OF SERVICE

I, Christine A. Harper, hereby state that I caused a copy of the foregoing Notice of Filing, Defendants' Proposed Findings of Fact and Conclusions of Law Re Motion To Disqualify Reuben & Proctor, and Certificate of Service to all persons whose names appear on the attached Service List by delivering same by special messenger.

Christine A. Harper

Subscribed and Sworn
before me this 28th day
of June, 1983.

Cynthia M. Nagel

Notary Public